

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

WALTER DUANE WHITE,

Petitioner,

v.

**Civil Action No. 3:07cv8
(Judge Bailey)**

JOYCE FRANCIS, Warden,

Respondent.

OPINION/REPORT AND RECOMMENDATION

The *pro se* petitioner initiated this § 2241 habeas corpus action on January 17, 2007. On March 1, 2007, the undersigned conducted a preliminary review of the file and determined that summary judgment was not appropriate at that time. Therefore, the respondent was directed to show cause why the petition should not be granted.

After granting the respondent an extension of time to file a response, a timely response was filed on April 27, 2007. In the response, respondent addresses the petitioner's claims on the merits and requests that the petition be denied and dismissed with prejudice. On May 14, 2007, the petitioner filed a reply to the respondent's response.

This case is now before the Court on the petitioner's Declaration for Entry of Default in which the petitioner asserts that he is entitled to a default judgment because the respondent has failed to file a response to his reply and properly defend this action. However, as noted in the Show Cause Order issued by the Court on March 1, 2007 (dckt. 10), Rule 7(a) of the Federal Rules of Civil Procedure provides that "[t]here shall be a complaint and an answer . . . [n]o other pleading shall be allowed, except that the court may order a reply to answer . . ." Thus, the respondent is not required

to file a response to the petitioner's reply, and in fact, such a response is expressly prohibited by the Federal Rules. Therefore, the petitioner is not entitled to default judgment for the reasons stated and the undersigned recommends that the petitioner's motion (dckt. 36) be **DENIED**.

Within ten (10) days after being served with a copy of this Opinion/Report and Recommendation, any party may file with the Clerk of the Court, written objections identifying the portions of the recommendation to which objections are made, and the basis for such objections. A copy of such objections shall also be submitted to the Honorable John Preston Bailey, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket. The Clerk is further directed to provide copies of this Opinion/Report and Recommendation to counsel of record, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: October 31, 2007.

/s/ John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE